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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,663	07/29/2005	Erling Hagen	04-985	7409

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EXAMINER	
NUTTER, NATHAN M	

ART UNIT	PAPER NUMBER
1796	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/519,663	HAGEN ET AL.	
	Examiner	Art Unit	
	Nathan M. Nutter	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4,5 and 7-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,5 and 7-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

In response to the amendment filed 5 June 2009, the following is placed in effect.

The rejection of claims 1, 4, 5 and 7-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, is hereby expressly withdrawn, in view of applicants' amendment.

All other rejections of record are being maintained herein below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4, 5, 7-12 and 15-25 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Malm et al (US 7,279,526).

The reference to Malm et al teaches the manufacture of a polypropylene composition and molded articles produced therefrom using a process that may comprise a slurry polymerization step followed by two gas phase polymerization steps in sequence, as herein recited and claimed. The process is shown at column 3 (lines 30-44), wherein the α-olefin is ethylene. Note the paragraph bridging column 3 to column 4, the Examples and Table 2 at columns 9 and 10, which show monomer concentrations and the addition of hydrogen. Further, note column 4 (lines 55-63). The reference shows all of the process steps and the contemplated monomers and overlapping concentrations. The products thereof would be expected to possess identical characteristics, as herein claimed.

When a reference discloses all of the limitations of a claim except a property or function, and the Examiner is unable to determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note *In re Fitzgerald et al* 619 F. 2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). Note MPEP § 2112-2112.02.
As such, the instant claims are deemed to be anticipated, or at least obvious, from the teachings of Malm et al.

Claim Rejections - 35 USC § 103

Claims 1, 4, 5 and 7-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huovinen et al (US 6,503,993).

The reference to Huovinen et al teaches the manufacture of a polypropylene composition and molded articles produced therefrom using a process that may comprise a slurry polymerization step followed by two gas phase polymerization steps in sequence, as herein recited and claimed.

The patent to Huovinen et al shows the process steps at column 8 (lines 14 et seq.), wherein a propylene homopolymer is produced in a stirred-tank slurry reactor (lines 14, 15 and 19-22). This is followed by the use of two gas phase reactors (lines 30-33), all arranged in series (lines 64-65). The addition of ethylene is shown (lines 41-43). Note, further, the many Examples. At column 16, Example 8 (comparative), the reference shows the production of first a homopoly of propylene, with a subsequent addition of ethylene to produce an elastomer in the first gas phase reactor. These steps are echoed in other Examples.

The skilled artisan would have a high expectation of success to achieve the production of the polymer blends as herein recited following the steps disclosed in the reference. Nothing surprising or unexpected has been shown on the record.

Response to Arguments

Applicant's arguments filed 5 June 2009 have been fully considered but they are not persuasive.

With regard to the rejection of claims 1, 4, 5, 7-12 and 15-25 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Malm et al (US 7,279,526), it is pointed out that the rejection was made under 35 USC 102 and/or

103. When the interpretation of the claim(s) is or may be in dispute, i.e., given one interpretation, a rejection under 35 U.S.C. 102 is appropriate and given another interpretation, a rejection under 35 U.S.C. 103(a) is appropriate. See MPEP § § 2111-2116.01. The propylene polymer matrix disclosed at column 3 (lines 52-54) is the same as the homopolypropylene herein recited. The inclusion of ethylene in the composition is optional. The range recited is only for that optional inclusion and not for the other polymers employed, as applicants attempt to stipulate. Applicants have ignored the molar ratio of 0.45 to 1:1 which is clearly within the range recited. The ethylene content of the third polymer, though the reference teaches it as an ethylene copolymer, is not taught. This is the basis for the rejection being under both 35 USC 102 and 35 USC 103, since it cannot be determined that a difference is produced, and since the polymer is an ethylene polymer, the range of "77-99.9 mol %" ethylene is easily envisaged. Applicants have failed to provide data, evidence or logical reasoning as to establish any differences over the reference to Malm et al.

Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977). In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

With regard to the rejection of claims 1, 4, 5 and 7-25 under 35 U.S.C. 103(a) as being unpatentable over Huovinen et al (US 6,503,993), the use of any particular catalyst or other constituents not provided for, nor recited, are not excluded. Applicants are reminded that a reference is viewed for the entirety of its teachings, and not for isolated examples or passages relied upon to establish patentability. It is pointed out that the order of chambers coincides with that disclosed and recited herein. At column 8 (lines 41 et seq.) the reference teaches the process steps and choices of monomers, as recited herein. A homopolymer of propylene is produced at column 8 (lines 14 et seq.) in a slurry reactor. The use of gas phase reactors as the second and third chambers in the series is shown at (lines 22-25). The addition ethylene is shown at column 8 (lines 44-43). Manipulation of monomer content is shown variously throughout the reference, column 17 (lines 37-40), as a "desired amount." The motivation to manipulate these monomers is shown, regardless whether applicants ignore the teachings, as pointed out. As such, the reference clearly shows the process and the manipulation of the monomers. Given the level of skill in the art to manipulate monomers and the compositional limitations ascribed to each and to the polymers produced therefrom, a practitioner of ordinary skill would enjoy a high expectation to arrive at the instantly claimed invention. The use of known constituents in known manner would yield predictable results. Nothing unexpected is seen on the record. It is pointed out that gas phase reactions are known notoriously to produce elastomers.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/
Primary Examiner, Art Unit 1796

nmn

24 July 2009